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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	03:06-CR-00186-LRH-RAM
)	
v.)	
)	<u>ORDER</u>
DAVID LEROY LANTRY,)	
)	
Defendant.)	
_____)	

Three motions are currently before this court. The first is Defendant’s Motion to Suppress (#31). The Government has filed an opposition to this motion (#37) to which Defendant has replied (#42).

The second motion is Defendant’s Motion to Inspect and Produce Personnel Files of Federal Law Enforcement Officers and Walker River Tribal Police Officers (#32). The Government has filed a response to this motion (#38) to which Defendant has replied (#43).

The third motion is Defendant’s Motion for Notice of Intent to Introduce Evidence Pursuant to Federal Rules of Evidence 404(b) (#33). The Government has filed a response to this motion (#36) to which Defendant has replied (#41).

I. Motion to Suppress

A. Facts

The following facts are gathered from the exhibits supporting Defendant’s motion to

1 suppress. The Government does not contest Defendant's version of the facts. Therefore an
2 evidentiary hearing is unnecessary to decide Defendant's motion. *See United States v. Quoc Viet*
3 *Hoang*, 486 F.3d 1156, 1163 (9th Cir. 2007) ("An evidentiary hearing on a motion to suppress
4 need be held only when the moving papers allege facts with sufficient definiteness, clarity, and
5 specificity to enable the trial court to conclude that contested issues of fact exist." (quoting *United*
6 *States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000)).

7 On December 6, 2006, Damon Edminston, Supervisory Special Agent for the Bureau of
8 Indian Affairs, was assisting the Walker River Tribal Police in serving a warrant to search
9 Defendant's house. As Edminston watched, officers entered Defendant's house. Edminston then
10 heard multiple gunshots, after which injured officers exited the house.

11 Later, Jacob Quintero, the stepson of Defendant, exited the house. Quintero was injured.
12 He told Edminston that his father was shot and bleeding in the house.

13 After a lengthy period of time—at about 3:00 pm—Defendant yelled out of the house that he
14 wanted to come out. Defendant then crawled out of the house completely naked with gunshot
15 wounds on his stomach. At this point law enforcement officers had surrounded the house.

16 Edminston asked Defendant, "Where is the gun?" Defendant replied, "The one that I had?
17 It flew out of my hand when they shot me."

18 **B. Discussion**

19 Defendant is moving to suppress all evidence derived from his statement upon crawling out
20 of his house. He bases this claim upon the rule announced in *Miranda v. Arizona*, 384 U.S. 436
21 (1966), which generally requires courts to exclude statements elicited during custodial
22 interrogation when they were not preceded by certain warnings.

23 The Government does not contest that Defendant's statement was made during a custodial
24 interrogation; however, the Government argues that his statements is nonetheless admissible at trial
25 because it falls within the "public safety exception" announced in the U.S. Supreme Court decision
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1 *New York v. Quarles*, 467 U.S. 649 (1984).

2 In *Quarles*, a police officer was informed by a woman that she had just been raped. *Id.* at
3 651. She also reported that the perpetrator was currently inside a supermarket and carrying a gun.
4 *Id.* at 651-52. When the officer entered the supermarket, the defendant ran away, causing the
5 officer to lose sight of him for several seconds. *Id.* at 652. When the officer regained sight of the
6 defendant, the officer ordered him to stop. *Id.* The officer then frisked the defendant and
7 discovered he was wearing an empty shoulder holster. *Id.* The officer handcuffed the defendant
8 and asked him where the gun was. *Id.* The defendant nodded in a particular direction and said,
9 “[T]he gun is over there.” *Id.* The officer found the gun, placed the defendant formally under
10 arrest, and read him his Miranda warnings. *Id.*

11 In the defendant’s state prosecution for criminal possession of a weapon, the trial judge
12 excluded the statement, “The gun is over there” and the gun itself because the officer did not give
13 the defendant Miranda warnings before asking him where the gun was. *Id.* at 652-53.

14 The New York Court of Appeals affirmed this exclusion, but the U.S. Supreme Court
15 reversed. *Id.* at 653, 660. The Court held that “on these facts there is a ‘public safety’ exception to
16 the requirement that Miranda warnings be given before a suspect’s answers may be admitted into
17 evidence, and that the availability of that exception does not depend upon the motivation of the
18 individual officers involved.” *Id.* at 655-56. The Court defined its new rule further by stating that
19 the “doctrinal underpinnings of Miranda . . . [do not] require that it be applied in all its rigor to a
20 situation in which police officers ask questions *reasonably prompted by a concern for the public*
21 *safety.*” *Id.* at 656 (emphasis added).

22 The Court found that the public safety exception applied in the defendant’s case because
23 “[s]o long as the gun was concealed somewhere in the supermarket, with its actual whereabouts
24 unknown, it obviously posed more than one danger to the public safety: an accomplice might make
25 use of it, a customer or employee might later come upon it.” *Id.* at 657. The Court also found that
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1 “[t]he exception will not be difficult for police officers to apply because in each case it will be
2 circumscribed by the exigency which justifies it. We think police officers can and will distinguish
3 almost instinctively between questions necessary to secure their own safety or the safety of the
4 public and questions designed solely to elicit testimonial evidence from a suspect.” *Id* at 658-59.

5 Turning to the case at bar, the court concludes that the public safety exception applies to
6 Defendant’s response to Agent Edminston’s question, “Where is the gun?” That is, the defendant’s
7 statement, “The one that I had? It flew out of my hand when they shot me” was in response to a
8 question reasonably prompted by a concern for the public safety. At that point, Agent Edminston
9 could not have been certain whether there were still accomplices inside the house or whether
10 someone could still be endangered by the gun. From an objective standpoint, therefore, Agent
11 Edminston’s question was motivated by a need to neutralize a volatile situation in which officers
12 and Defendant had recently been shot, rather than an opportunity to collect evidence for later
13 prosecution.

14 Defendant argues that the public safety exception does not apply because he clearly did not
15 have a gun on his person. While the court appreciates that the Defendant probably did not pose
16 much of a danger after crawling out of his house naked, it is not this fact that determines the public
17 safety exception’s applicability. Agent Edminston’s question was designed to quell any further
18 danger that the gun could have posed. The fact that Defendant may have not presented any further
19 danger in relation to that gun is immaterial.

20 **II. Motion to Inspect and Produce Personnel Files of Federal Law Enforcement Officers and**
21 **Walker River Tribal Police Officers**

22 Defendant also moves this court to order the Government to inspect and produce personnel
23 files of all law enforcement officers it intends to call as witnesses. Defendant lists fourteen
24 individuals who he believes should be subject to this requested order.

25 In its response, the Government states that it does not intend to call all fourteen individuals
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1 listed by Defendant; however, the Governments states that it intends to comply with Defendant's
2 request with respect to the federal officers whom the Governments intends to call at trial. The
3 court agrees that the Government need only produce the files of witnesses who it intends to call at
4 trial. *See United States v. Henthorn*, 931 F.2d 29, 30 (9th Cir. 1991) (discussing the procedure the
5 prosecution must follow when a defendant requests the personnel files of *testifying* officers). Thus,
6 Defendant's motion to produce is granted to the extent that he requests exculpatory evidence
7 contained within the personnel files of federal law enforcement officers whom the Government
8 intends to call at trial.

9 The Government also contends that it is not obligated to inspect and produce files
10 pertaining to four tribal police officers: Robert Holbrook, Joseph McMinn, Roman Sanchez, and
11 Brian Howe. The Government cites to 25 C.F.R. § 12.21(b), which states that "[t]ribal law
12 enforcement officers operating under a BIA contract or compact are not automatically
13 commissioned as Federal officers; however, they may be commissioned on a case-by-case basis."
14 The Government states that none of the above four tribal police officers were commissioned as
15 federal officers at the time of the alleged crime, and they are still not commissioned as federal
16 officers at time of its filing. The Government also points out that under the Ninth Circuit decision
17 *United States v. Dominguez-Villa*, 954 F.2d 562 (9th Cir. 1992), it is not obligated to review state
18 law enforcement files not within its possession or control.

19 The court agrees that if these four officers were not commissioned as federal officers, and
20 their personnel files are not within the Government's possession or control, then the Government is
21 not obligated to examine or produce their personnel files. Because 25 C.F.R. § 12.21(b) makes a
22 distinction between tribal law enforcement officers who are commissioned as federal officers and
23 those who are not, the court is persuaded that noncommissioned tribal officers are not subject to
24 oversight that would require the Government produce their personnel files under *Dominguez-Villa*.
25 However, the Government is hereby put on notice that if it these tribal officers were in fact
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1 commissioned as federal officers on the date of the alleged crime, or if the tribal officers' personnel
2 files come into the Government's possession, the Government must examine these officers'
3 personnel files for exculpatory evidence and deliver that evidence to Defendant.

4 **III. Motion for Notice of Intent to Introduce Evidence Pursuant to Federal Rules of Evidence**

5 **Rule 404(b)**

6 Defendant also moves this court to order the Government to provide notice of the general
7 nature of any evidence the Government intends to introduce under Federal Rules of Evidence
8 404(b). Defendant further requests that the Government produce this notice one month before trial.
9 The Government responds that while it intends to provide reasonable notice of the general nature of
10 Rule 404(b) evidence, it opposes an order requiring it to produce this evidence one month before
11 trial. Instead, the Government states that it will practice due diligence in providing notice of its
12 intent to use Rule 404(b) evidence.

13 The court grants Defendant's motion for notice of the Government's intent to introduce
14 Rule 404(b) evidence. The Government is therefore ordered to produce notice of the general nature
15 of the Rule 404(b) evidence it intends to introduce at trial two weeks before the scheduled trial
16 date. That is, the Government must provide this notice on or before June 3, 2008.

17 IT IS THEREFORE ORDERED that Defendant's motion to suppress (#31) is DENIED.

18 IT IS FURTHER ORDERED that the Government produce exculpatory evidence contained
19 within the personnel files of the federal law enforcement officers whom the Government intends to
20 call at trial.

21 IT IS FURTHER ORDERED that if the four tribal officers involved in this case were in fact
22 commissioned as federal officers on the date of the alleged crime, or if the tribal officers' personnel
23 files come into the Government's possession, the Government shall examine the tribal officers'
24 personnel files for exculpatory evidence and deliver that evidence to Defendant.

25 IT IS FURTHER ORDERED that Defendant's Motion for Notice of Intent to Introduce
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1 Evidence Pursuant to Federal Rules of Evidence 404(b) (#33) is GRANTED, and the Government
2 shall therefore produce notice of the general nature of the Rule 404(b) evidence it intends to
3 introduce at trial on or before June 3, 2008.

4 IT IS SO ORDERED.

5 DATED this 6th day of November, 2007.



8 LARRY R. HICKS
9 UNITED STATES DISTRICT JUDGE